

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
)	
v.)	CRIMINAL NO.
)	00-10383-PBS
PAUL R. ARGUIN,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

July 26, 2010

Saris, U.S.D.J.

I. INTRODUCTION

Defendant Paul Arguin seeks an order declaring that his \$3.2 million restitution obligation has been satisfied. Arguin argues that the government has been compensated fully for its loss following a \$15 million settlement with his former employer in a related action. After hearing, the Court **ALLOWS** the Motion in part and **DENIES** it in part.

II. BACKGROUND

A. Restitution Under the Plea Agreement

Arguin and his co-defendants, Victor Garber, Lisa Arguin, Greenleaf Technology Associates, Inc., and Merrimac Systems Corporation, were charged in a forty-nine count indictment with conspiracy to defraud the United States Air Force.¹ The

¹ Specifically, the indictment included charges for Conspiracy to Defraud the United States, in violation of 18 U.S.C. § 371 (Count 1); Wire Fraud and Aiding and Abetting, in

indictment alleged multiple schemes through which Arguin and Garber used their positions as technology consultants to the Air Force employed by defense contractor Dynamics Research Corporation ("DRC") to divert government procurement funds for personal use. "Arguin would advise the Air Force to purchase goods and services from third-party contractors and then, in turn, receive payment from these contractors in exchange for providing some or all of the goods and services himself." United States v. Dynamics Res. Corp., No. 03-cv-11965-NG, 2008 WL 886035, at *1 (D. Mass. Mar. 31, 2008) (discussing the same facts in context of a subsequent civil suit by the United States against DRC). These arrangements resulted in substantial overcharges to the government for computer installation services and "clone" memory units substituted for brand name products, as well as charges for goods and services that the government never received. Id.

Arguin ultimately pled guilty to twenty-four counts of the indictment, and the Court sentenced him to sixty months incarceration followed by twenty-four months of supervised

violation of 18 U.S.C. §§ 1343, 1346, and 2 (Counts 2-19); Theft and Conversion of Public Property, in violation of 18 U.S.C. § 641 (Count 20); Conspiracy to Commit Money Laundering Offenses, in violation of 18 U.S.C. § 1956(h) (Count 21); Money Laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), and 1957 (Counts 22-43); Conspiracy to Obstruct Justice and Tamper with Witnesses, in violation of 18 U.S.C. § 371 (Count 44); and Witness Tampering and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(b)(1), 1512(b)(2)(B), and 2 (Counts 45-49).

release, as well as imposing a \$2,400 special assessment and \$3.2 million restitution obligation. (Docket No. 145.) That restitution order was based on the findings of the Presentence Report ("PSR"), which indicated that the government suffered a loss of \$9,518,182.78, from which Arguin received approximately \$3.2 million in profits.² (PSR ¶¶ 45-46, 75-76; Sentencing Hr'g Tr. 16, Mar. 8, 2002.) Defendant did not object to this calculation of loss amount, although he took the position that the actual direct financial loss to the government on account of his crimes was zero. (PSR Objection #7.)

In addition to agreeing to a recommendation on his prison sentence, fine, and restitution payment, Arguin's plea agreement states that he "will not seek any reduction of any of the financial payments described in this agreement, nor seek the return of any funds paid pursuant to this agreement on the basis of any monies recovered by the government from any other person or entity." (Docket No. 109 at 8.) The Court apportioned liability among the defendants, including the \$3.2 million apportioned to Arguin, on the basis of that recommendation and the facts indicated in the PSR. See 18 U.S.C. § 3664(h) (permitting the court to "apportion liability among the

² The PSR calculated that the total loss stemming from Arguin and his co-defendants' unlawful activity was \$10,035,373.91, but discounted \$517,191.13 as appropriate profits to one party involved, arriving at the final figure of \$9,518,182.78. (PSR ¶ 76.)

defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.").

Pursuant to his plea agreement, Arguin agreed that certain funds held in his or his ex-wife and co-defendant, Lisa Arguin's, name would be used to pay restitution. (See Docket No. 147.) Those funds, along with proceeds from sales of his other assets, were transferred to the government in partial satisfaction of his restitution obligation. Those assets include several bank and investment accounts, Arguin's car, boat, and second home, and a portion of his monthly income during his incarceration, subsequent stay in a halfway house, and current employment. (Id.; see also Def.'s Br., Ex. D.) To date, Arguin has repaid between \$300,000 and \$400,000 of his restitution obligation. In addition, the Clerk of Court currently is holding for distribution to the government \$403,222.49 of Arguin's, including \$150,000 from the equity refinancing of his former marital home in Amesbury, Massachusetts, and \$253,222.49 seized from six of his additional investment accounts. (See Def.'s Br., Ex. E.) Pursuant to this Court's order of November 30, 2009, the Clerk's Office is holding that money in escrow pending the resolution of this motion. (Docket No. 205.)

B. The Civil Settlement with Arguin's Employer

The present motion arises from the settlement of a related civil action brought by the government against Arguin's former

employer, DRC. United States v. Dynamics Res. Corp., No. 03-CV-11965-NG (the "DRC litigation"). There, the government sought damages against DRC on the same facts at issue here under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Anti-Kickback Act (the "AKA"), 41 U.S.C. § 51-58, and common law breach of contract. The government's monetary claim against DRC under the False Claims Act was "\$30,106,121.73 (treble damages), plus penalties of \$5,000.00-\$11,000.00 for each of at least 84 false claims, minus \$6,230,000.00 in recoveries already made from other parties[,] for a total between \$24,296,121.73 and \$24,800,121.73. Dynamics Res. Corp., 2008 WL 886035, at *1 & n.1; see also Plaintiff's Memorandum in Support of Motion for Summary Judgment at 33, United States v. Dynamics Res. Corp., No. 03-11965 (D. Mass. Mar. 31, 2008) (requesting this amount of damages as the sole measure of relief requested in the conclusion of its brief).³ The government alleged that it suffered \$10,035,373.91 in single damages, the same figure included in the PSR (prior to the deduction of \$517,191.13 in authorized

³ The government also maintained that DRC was liable under the AKA "for civil penalties and double damages totalling \$19,791,547.82, and for \$10,035,373.91 for breach of contract." Dynamics Res. Corp., 2008 WL 886035, at *1. However, in its summary judgment briefing, the government emphasized that it raised those claims only as alternate theories of recovery, not in addition to its primary claim under the FCA. Plaintiff's Memorandum in Support of Motion for Summary Judgment at 32 & nn.14, 15, Dynamics Res. Corp., No. 03-11965 ("The United States asks that the Court enter judgment on each [theory], but the recoveries would be in the alternative, not cumulative.").

profits).⁴ Plaintiff's Memorandum in Support of Motion for Summary Judgment at 30, Dynamics Res. Corp., No. 03-11965.

In opposing the present motion, the government claims that the ultimate settlement of the DRC litigation "does not even cover the \$43 million in potential single damages at issue in that case, let alone the multiple damages and penalties and other claims that the United States is entitled to recover" (Gov't's Br. at 1.) More specifically, the government claims that "[t]he single damages for false claims set forth in the United States' Statement of Undisputed Facts was a total of \$43,658,585, of which \$10.1 million was for false claims caused by DRC and its employees (including Arguin) but submitted by others, and \$23,585,685 was for false billings submitted by DRC." (Id. at 3.) Labor billed by Arguin, Garber, and two others amounted to at least \$877,369.81. (Gov't's Br., Ex. A at 25.)

The government likely made an arithmetic error in its brief - the actual numbers are \$10,035,373.91 and \$23,585,685.09, respectively, for a total of \$33,621,059. (Id. at 24-25.) Even when this error is corrected, the amount and significance of these figures are confusing. The briefing in the DRC litigation

⁴ The government indicated that this amount did not include damages resulting from services provided by DRC that were tainted by conflicts of interest, which it did not press but reserved the right to seek "if summary judgment is not granted to the full extent authorized by the FCA." Plaintiff's Memorandum in Support of Motion for Summary Judgment at 30 n.12, Dynamics Res. Corp., No. 03-11965.

refers to these numbers as the total amounts paid to DRC and other contractors "pursuant to Delivery Orders under [the relevant contracts] that were under the direction of Arguin and/or Garber during the pendency of their criminal scheme (i.e., from November 1996 to the end of 2000)." (Id. at 25.) DRC hotly disputed these figures in its summary judgment filings, arguing that the amounts paid under the contracts were not "relevant to the calculation of damages under any of the theories advanced by the Government" and contesting the government's numbers themselves as covering a longer period and greater scope of activity than was actually relevant. Defendant's Counter Statement of Material Facts at 51-52, *Dynamics Res. Corp.*, No. 03-11965; see also id. at 52 (disputing the relevance of the amount billed directly for labor delivery hours of Arguin to the government's damages calculation). Notably, the government did not mention these figures at all in its summary judgment brief or explain their rationale.

The Court (Gertner, J.), acknowledging the \$10,035,373.91 single damages number actually advanced by the government, allowed the government's motion for summary judgment with respect to FCA liability, but held that there were material factual issues as to the value of the goods and services received by the government. Dynamics Res. Corp., 2008 WL 886035, at *21. The case resolved with a settlement under which DRC admitted only

that it breached its Air Force contracts and paid the government \$15 million plus interest. That agreement stated, "Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement . . . are the . . . claims of the United States [as to] . . . [a]ny liability of Paul Arguin or Victor Garber, including any obligation to pay criminal restitution." (Gov't's Br., Ex. C ¶ 3.)

A government press release announcing the settlement emphasized that "[t]he \$15 million recovered in the settlement agreement with the company is more than the restitution figures from the criminal cases. The United States' total recovery in these actions exceeds by approximately \$10 million the losses it estimated as a result of the misconduct." (Def.'s Br., Ex. G.) Arguin now claims that his restitution obligation should be deemed satisfied, since the government has collected at least \$21.2 million - the \$15 million settlement with DRC (excluding interest) plus the \$6.23 million previously recovered from Arguin and other parties - from all sources with regard to the criminal conduct of Arguin and his co-defendants.

III. DISCUSSION

The Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. §§ 3663A-3664, states, "Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as

compensatory damages for the same loss by the victim in . . . any Federal civil proceeding" 18 U.S.C. § 3664(j)(2).

Arguin contends that, since the government has recovered more than twice the amount of its loss, his restitution should be deemed satisfied and the money held in escrow returned to him. The government argues that its recovery against DRC was not for "the same loss," entitling Arguin to no offset.

The purpose of Section 3664(j)(2) "is to prevent double recovery by a victim." United States v. Stanley, 309 F.3d 611, 613 (9th Cir. 2002). If the victim later recovers civil damages for the same loss, the court subtracts that sum from the victim's loss to determine the defendant's remaining restitution. Id.; see also United States v. Nucci, 364 F.3d 419, 423 (2d Cir. 2004) (holding that victim may not receive double recovery in a criminal context); United States v. Dawson, 250 F.3d 1048, 1050 (7th Cir. 2001) (concluding that, in the criminal context, a victim should not receive more restitution than necessary to make it whole); cf. United States v. Leon-Delfis, 203 F.3d 103, 116 (1st Cir. 2000) (noting in a separate context that money that might be paid to the government depending on the outcome of subsequent litigation may reduce defendant's restitution). The burden of establishing double payment is on the defendant. United States v. Parsons, 141 F.3d 386, 393 (1st Cir. 1998); see also 18 U.S.C. § 3664(e) ("The burden of demonstrating [by a preponderance of the evidence] such other matters as the court

deems appropriate shall be upon the party designated by the court as justice requires."); United States v. Sheinbaum, 136 F.3d 443, 449 (5th Cir. 1998) (reasoning that the burden of proving double recovery should fall on the defendant).

"In some cases, the nature of a settlement might show that the victim has been compensated for the loss." Parsons, 141 F.3d at 393. However, whether to offset a settlement agreement against a restitution agreement sometimes is a judgment call. In Parsons, for example, the First Circuit held that the District Court properly refused to offset a defendant's civil settlement with the FDIC against the \$1.6 million in losses for which a criminal court ordered him to pay restitution because the civil settlement had satisfied a number of larger claims in addition to the one for which the defendant was paying restitution. Id.; see also United States v. All Star Indus., 962 F.2d 465 (5th Cir. 1992) (denying an offset where a civil settlement encompassed a broader class of victims and behavior), abrogated on other grounds by United States v. Calverley, 37 F.3d 160 (5th Cir. 1994) (en banc).

The first question to be resolved, then, is what amount of damages is necessary to compensate the government for a False Claims Act violation. Under the FCA, damages are calculated by multiplying the amount of the government's original loss and then deducting the amount of the compensatory payments. See United States v. Bornstein, 423 U.S. 303, 314-17 (1976) (discussing the

FCA provision that, at the time, only doubled damages). The Supreme Court explained that

this method of computation comports with the congressional judgment that double damages are necessary to compensate the Government completely for the costs, delays and inconveniences occasioned by fraudulent claims. Second, the rule that damages should be doubled prior to any deductions fixes the liability of the defrauder without reference to the adventitious actions of other persons.

Id. (footnote omitted); see also Cook County v. United States ex rel. Chandler, 538 U.S. 119, 131 (2003) (noting the importance of multiple damages in light of the fact that "[t]he FCA has no separate provision for prejudgment interest, which is usually thought essential to compensation"). Even if one accepts the measure of single damages advanced by the government in the DRC case rather than that indicated on the PSR, the government is owed only \$20,070,747.82 in double damages, less approximately \$6.23 million already recovered from other sources, leaving \$13,840,747.82. It received \$15 million plus interest in the settlement with DRC. This amount fully compensates for the FCA loss.

The government contends that the settlement does not compensate it fully because it was entitled to treble damages and penalties under the FCA in the DRC litigation. While the Supreme Court has recognized that doubling damages has a compensatory function, Bornstein, 423 U.S. at 314-17, it has held that treble damages can serve both compensatory and punitive purposes,

Chandler, 538 U.S. at 130. Nothing in the record here suggests that treble damages were necessary to compensate the government for its loss. However, the government arguably is allowed to allocate some of its settlement in the DRC litigation to the trebling and the penalties.

The government's other contention is that the \$15 million plus interest should not nullify Arguin's restitution, since that settlement resolved claims beyond those at issue in this case. While the government points now to \$33,621,059 in alleged false billings raised in the DRC litigation as unresolved single damages, the accuracy of those numbers is unclear on the record before the Court. Judge Gertner did not mention this theory of damages in her lengthy opinion and the parties' briefs in that case, including the government's, did not explain them or seem to press a claim for these additional damages. If there had been a viable alternative theory of damages, the government could certainly settle the claim. However, based on this record, it is unlikely the government relied on those monies for its theory of damages in the DRC litigation.

Under the circumstances, the Court exercises its discretion and reduces the restitution obligation. In light of the language in the plea agreement, the Court **DENIES** the request to release the monies in the escrow account because the government is allowed to allocate at least some of the settlement in the DRC

litigation to the penalty component of the FCA settlement. However, in light of the huge settlement between the government and DRC, the wording of the press release, and the lack of clarity with respect to the government's alternative theory of damages, the Court finds that Mr. Arguin has no future restitution obligations.

ORDER

Defendant's Motion for an Order deeming his restitution paid and satisfied [Docket No. 202] is **ALLOWED** after the funds in the escrow account are paid to the government. The Court **DENIES** the request to distribute the funds held in escrow to the defendant.

/s/ PATTI B. SARIS
PATTI B. SARIS
United States District Judge